

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Lawrence Livermore National
Laboratory (LLNL)
7000 East Avenue
Livermore, California 94550

EPA ID No. CA2 890 012 584

The U.S. Department of Energy and
the University of California Regents

Respondents.

Docket HWCA 2004 0573

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and the U.S. Department of Energy (DOE), a department of the federal government, and to the University of California Regents (Regents), the governing board of the University of California System, established under Article IX, Section 9 of the California Constitution (Respondents) enter into this Consent Order and agree as follows:

1. Respondents generate, handle, treat, and/or store hazardous waste at Lawrence Livermore National Laboratory (LLNL), 7000 East Avenue, Livermore, California, 94550 (Site).
2. The Department inspected the Site on May 27-28, and June 1-3, 2004.
3. The Department alleges the following violations:
 - 3.1. The Respondents violated California Code of Regulations, title 22, section 66265.177, subsection(a), in that on or about February 20, 2004, a Laboratory Researcher in Building 235, placed hazardous waste solvents (methanol, ethanol,

acetone and water) and 70% nitric acid in a 5-gallon poly container, causing the incompatible wastes to react and generate nitrous oxide gases.

Based on their August 16, 2004 submittal, the Respondents have returned to compliance regarding violation 3.1. Respondents have stated in their submittal that incompatible wastes such as solvent mixtures and concentrated acid mixtures, are managed separately in compatible containers and all personnel handling such wastes are trained. The employee involved in the incident was provided additional training. Moreover, Respondents have implemented procedures in all areas at the facility (generator and permitted), to prevent similar occurrences in the future.

3.2. The Respondents violated Health and Safety Code 25189.2, subdivision (a), and California Code of Regulations, title 22, section 66268.7, subsection(a)(3), in that on or about June 9, 2004, a prohibited waste, Q86925/W209971, not meeting land disposal restrictions treatment standards was shipped off-site and certified as meeting treatment standards for land disposal, to wit:

Based on the analytical results for W209971 dated November 14, 2002, the hazardous constituents for toluene and p- & m-xylene at 120 mg/kg and 280 mg/kg, were not below 10mg/kg and 30 mg/kg, respectively, as specified in the table "Treatment Standards for Hazardous Wastes", California Code of Regulations, title 22, section 66268.40.

Although W 209971 did not meet LDR treatment standards, the shipment to Envirocare on June 9, 2004 was accompanied with a certification, "I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in 40 CFR Part 268 Subpart D. I believe that the information is true, accurate, and complete..."

3.3. The Respondents violated Health and Safety Code 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subsection (a) and

66264.13, and Hazardous Waste Facility Permit, Part IV. 5. (d) in that on or about May 18, 2004, the Respondents failed to make an accurate waste determination on waste W209971, to comply with land disposal restrictions requirements, to wit:

Respondents completed a Waste Disposal Requisition Change Request on May 18, 2004, indicating that hazardous concentrations of: tetrachloroethylene; trichloroethylene; benzene; toluene; 1,1,1-trichloroethane; methylene chloride and 2-butanone (methyl ethyl ketone) were below 5 mg/kg. However, analytical results for W209971, showed that concentrations of toluene and p- & m- xylene were 120 mg/kg and 280 mg/kg, respectively. Treatment Standards per California Code of Regulations, title 22, section 66268.40 are: 10 mg/kg for toluene and 30 mg/kg for p- & m- xylene.

Respondents have returned to compliance regarding violations 3.2 and 3.3 by providing the Department with information pertaining to: the timely and accurate hazardous waste characterization, interpretation and validation of analytical results; the steps being taken to prevent the recurrence of similar incidents in the future; and documentation that the waste (W209971) sent to Envirocare was treated to meet Land Disposal Restrictions treatment standards prior to land disposal.

3.4. The Respondents violated Health and Safety Code, sections 25202, subdivision (a) and 25188, California Code of Regulations, title 22, section 66270.30, subsection (a) and Hazardous Waste Facility Permit (HWFP), Parts III.2(b) and IV.10(a) in that on or about April 30, 2002 through May 21, 2004, the Respondents stored Q63853/W209973 for more than one year in Area 612-1A, without authorization, to wit :

Respondents received Q63853/W209973 at the permitted area on April 30, 2001. Based on generator information provided on the Waste Disposal Requisition (WDR), the waste did not meet Land Disposal Restrictions (LDR) treatment standards and were placed on the Site Treatment Plan. Analytical results dated June 24, 2002 (sample collected on Feb 25, 2002) showed that the waste met LDR standards, as

indicated on a WDR Change Request completed on May 19, 2004. Respondents submitted a notification of waste stored more than one year for Q63853/W209973 on May 21, 2004, two years after the one year limit was exceeded.

4. A dispute exists regarding the alleged violations.
5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.
6. Jurisdiction exists pursuant to Health and Safety Code section 25187.
7. Respondents waive any right to a hearing in this matter.
8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

9. Respondents shall comply with the following:
 - 9.1. With regard to violation 3.4., effective immediately, Respondents shall request from the Department, continued storage of mixed wastes meeting Land Disposal Restrictions standards, at least 30 days prior to reaching the one year allowable limit in the Hazardous Waste Facility Permit.
 - 9.2. Submittals: All submittals from Respondents pursuant to this Consent Order shall be sent to:

Ms. Luz Castillo
Senior Hazardous Substances Scientist
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

- 9.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to

Respondents in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondents shall be construed to relieve Respondents of their obligation to obtain such formal approvals as may be required.

9.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

9.5. Compliance with Applicable Laws: Respondents shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondents to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondents, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order,

Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondents in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.9. Sampling, Data, and Document Availability: Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondents pursuant to this Consent Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondents for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondents shall

notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents or related parties specified in paragraph 10.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondents or its agents in carrying out activities pursuant to this Consent Order.

9.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondents pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.12. Extension Requests: If Respondents are unable to perform any activity or submit any document within the time required under this Consent Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

10. Within 30 days of the effective date of this Consent Order, Respondents shall pay the Department a total of \$ 31,500, of which \$ 22,912 is a penalty and \$ 8,588 is reimbursement of the Department's costs. Respondents' check shall be made payable to Department of Toxic Substances Control, and shall be

delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Ms. Luz Castillo
Senior Hazardous Substances Scientist
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

To: Mr. Joseph Smith
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondents fail to make payment as provided above, Respondents agree to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

11.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of

such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

11.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondents and their officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

11.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: August 14, 2006 Original signed by Phil Hill
Phil Hill
Technical Deputy for Safety and
Environmental Programs
National Nuclear Administration
U.S. DEPARTMENT OF ENERGY

Dated: August 8, 2006 Original signed by William A. Bookless
William A. Bookless
Associate Director
Safety and Environmental Protection
UNIVERSITY OF CALIFORNIA REGENTS

Dated: August 28, 2006 Original signed by Luz Castillo
Luz Castillo
Senior Hazardous Substances Scientist
DEPARTMENT OF TOXIC SUBSTANCES CONTROL